

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x Index #: 07 CIV 8630
ANIBAL LIMA,

Plaintiff,

- against -

VERIFIED ANSWER

SUNOCO, INC. (R&M), f/k/a SUN COMPANY,
INC.,

Defendants.

Defendant, SUNOCO, INC. (R&M), f/k/a SUN COMPANY INC. (R&M)
(hereinafter referred to as "SUNOCO"), by its attorneys, BURNS,
RUSSO, TAMIGI & REARDON, L.L.P., as and for its verified answer
to plaintiff's verified complaint, respectfully alleges upon
information and belief:

PARTIES

1. Denies knowledge or information sufficient to form a
belief as to the truth of the allegations contained in
paragraph "1" of the verified complaint.

JURISDICTION

2. Denies each and every allegation contained in paragraph
"3" of the verified complaint.

CLAIMS

3. Denies knowledge or information sufficient to form a
belief as to the truth of the allegations contained in
paragraphs "6", "7", "8", "12", "14", "15", "16", "17", "18",

"19", "20" and "21" of the verified complaint, and respectfully refers all questions of law to the determination of the Court.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "9", "10", "11" and "13" of the verified complaint.

5. Denies each and every allegation contained in paragraphs "22", "23" and "24" of the verified complaint.

**AS AND FOR A FIRST, SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

6. The complaint fails to state a cause of action upon which relief can be granted as against this answering defendant.

**AS AND FOR A SECOND, SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

7. In the event that plaintiff's damages as alleged in the complaint were caused, in whole or in part, by the culpable conduct of the plaintiff, then the amount of damages otherwise recoverable by the plaintiff should be extinguished or reduced in the proportion which the culpable conduct attributable to plaintiff bears to the culpable conduct which caused the damages.

**AS AND FOR A THIRD, SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

8. All risks, hazards and dangers alleged by plaintiff or otherwise involved in this action, if any, were known to plaintiff, were open, obvious, notorious and apparent, and the plaintiff assumed the risks thereof.

**AS AND FOR A FOURTH, SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

9. The alleged acts or omissions of this answering defendant were not the proximate cause of any injuries or damages incurred by plaintiff. Any injuries or damages incurred by plaintiff were the result of plaintiff's own actions, the actions of others and/or the superseding intervention of causes outside the control of this answering defendant.

**AS AND FOR A FIFTH, SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

10. In the event of any judgment or verdict on behalf of the plaintiff, this answering defendant is entitled to a set-off of verdict with respect to the amounts of any payments made to the plaintiff for medical and/or other expenses or damages prior or subsequent thereto.

**AS AND FOR A SIXTH, SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

11. This Court lacks subject matter jurisdiction over this action.

AS AND FOR A SEVENTH, SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE

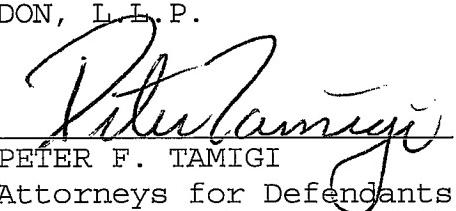
12. Plaintiff was under an obligation to mitigate their damages and have failed to do so.

WHEREFORE, defendant SUNOCO, INC. (R&M), f/k/a SUN COMPANY, INC., demands judgment dismissing the complaint herein, together with the costs and disbursements of this action including, but not limited to, any all legal fees incurred in the defense hereof, and such other and further relief as this Court deems just and proper.

Dated: Garden City, New York
October 31, 2007

Yours, etc.

BURNS, RUSSO, TAMIGI &
REARDON, L.L.P.

By: 
PETER F. TAMIGI
Attorneys for Defendants
SUNOCO, INC. (R&M) f/k/a
SUN COMPANY, INC. (R&M)
390 Old Country Road
Garden City, NY 11530
516/746-7371
Our File No.: CIG 12760

TO: LANGSAM LAW LLP
Attorney for Plaintiff
7 Dey Street, Suite 500
New York, NY 10007
(212) 742-2700

VERIFICATION

I, MELINDA KRING, hereby state that I am employed as Senior Paralegal in the Law Department of Sunoco, Inc. (R&M), and as such am authorized to make this verification on behalf of Sunoco, Inc. (R&M). I am informed and therefore aver that the statements made in Defendant Sunoco, Inc. (R&M)'s Answers to Plaintiff's Complaint are based upon information and records of Defendant furnished to me by others and are true and correct to the best of my knowledge, information and belief.

By: Melinda Kring
MELINDA KRING

Date: 11/2/07

AFFIDAVIT OF SERVICE BY MAIL

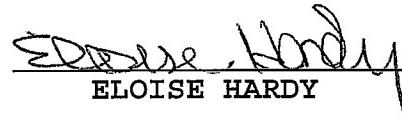
STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

ELOISE HARDY, being duly sworn, deposes and says:

I am not a party to this action, I am over 18 years of age, and I reside in Nassau, New York.

On November 2, 2007, I served the within **VERIFIED ANSWER AND NOTICE TO TAKE DEPOSITION UPON ORAL EXAMINATION** upon the parties listed below at the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depositary under the exclusive care and custody of the United States Postal Service within the State of New York.

TO: LANGSAM LAW LLP
Attorney for Plaintiff
7 Dey Street, Suite 500
New York, NY 10007
(212) 742-2700


ELOISE HARDY

Sworn to before me this
2nd day of November, 2007


NOTARY PUBLIC

JEFFREY BURKHOFF
Notary Public, State of New York
No. 02BU5028162
Qualified in Suffolk County
Commission Expires May 23, 2010